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April 10, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 220
Washington, DC 20554

RE: CC Docket Nos. RM-8606 and 92-77

Dear Mr. Caton:

Enclosed please find the original and ten copies of the Comments of the National Association of Attorneys General Telecommunications Subcommittee to be filed in the above matters.

Thank you for your consideration.

Sincerely yours,

Neil G. Fishman
Assistant Attorney General

NGF:pas
Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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IN THE MATTER OF)
)
PETITION FOR RULEMAKING)
OF THE NATIONAL ASSOCIATION OF)
ATTORNEYS GENERAL PROPOSING)
ADDITIONAL DISCLOSURE BY SOME)
OPERATOR SERVICE PROVIDERS)
)
AND)
)
COMPTEL's FILING IN CC)
DOCKET NO. 92-77)
PROPOSING A RATE CEILING)
ON OPERATOR SERVICE CALLS)

CC DOCKET NO. RM-8606

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CC DOCKET NO. 92-77

COMMENTS OF THE
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
TELECOMMUNICATIONS SUBCOMMITTEE OF THE
CONSUMER PROTECTION COMMITTEE

APRIL 12, 1995

I. INTRODUCTION

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("NAAG") hereby submits these comments in response to the ex parte Rate Ceiling Proposal ("Rate Ceiling Proposal") filed on March 7, 1995 by the Competitive Telecommunications Association ("CTA"), et al. with the Federal Communications Commission ("FCC") in CC Docket No. 92-77, In the Matter of Billed Party Preference for O+InterLATA Calls. By notice dated March 13, 1995, the FCC invited comments from interested parties on both the Rate Ceiling Proposal, and the Petition for Rulemaking ("Petition") previously filed by NAAG in CC Docket No. RM-8606.

The NAAG Petition proposed to amend 47 CFR § 64.703(a) by requiring that certain operator service providers ("OSPs") provide additional information to consumers who use payphones or other public phones. For those OSPs whose rates, connection fees and other charges exceed dominant carrier rates, the NAAG Petition proposed a "voice-over following carrier identification" which would inform the consumer: 1) that the call may not be carried by the consumer's regular telephone company; 2) that the charges may be more than the consumer's regular telephone company

would charge; and 3) how to contact the consumer's regular telephone company.

Although NAAG recognizes that exorbitant rates charged by some OSPs have triggered a large number of consumer complaints and a significant level of consumer dissatisfaction, we do not support CTA's Rate Ceiling Proposal, either in addition to or in lieu of the NAAG proposed additional disclosure requirement. Consumers should be informed how to reach the carrier of their choice, regardless of the level of charge that would be incurred. Even assuming that the NAAG proposed disclosure requirement were adopted, the Rate Ceiling Proposal is problematic. This proposal would authorize OSPs to charge rates which are not cost based and which are substantially higher than existing dominant carrier rates and may actually lead to rate increases.

II. THE RATE CEILING PROPOSAL DOES NOT ENSURE THAT OSPs WILL CHARGE CONSUMERS REASONABLE RATES.

A. The Rate Ceiling Proposal Substantially Understates The Extent Of OSP Abuses.

The Rate Ceiling Proposal, at 2 and 5, is based on the incorrect assumption that complaints about excessive OSP rates are "the only remaining area of concern" and that these complaints reflect a "small and diminishing problem" for

consumers. While more consumers may be succeeding in dialing-around OSPs to reach their regular carriers, complaints continue to demonstrate that substantial numbers of consumers are still not aware that their calls are being carried by OSPs; and similarly, that OSP charges are substantially in excess of their regular carriers' rates. In fact, the Rate Ceiling Proposal points out that even now 34-45% of OSP calls are not dial-around calls. See Rate Ceiling Proposal, at 3 and footnote 6. For the many consumers who are not savvy enough to dial-around an OSP, consumer abuse continues to be prevalent.

While exorbitant OSP charges are clearly the most aggravating concern to consumers, such charges are also attributable to other factors. These include the well documented instances of: unlawful blocking, unlawful lack of branding or incorrect branding, misleading or confusing carrier identification, unlawful slamming^{1/} and the inability of consumers to obtain rate information immediately prior to having a call placed through an OSP.

1/ See, e.g., FCC Notice of alleged violations regarding Oncor Communications, dated March 29, 1995, concerning slamming.

The Rate Ceiling Proposal will not ensure either compliance with existing OSP standards, or that consumers are not caught unaware that they are being charged excessive rates by an OSP.

B. If Adopted, The CTA Rate Ceiling Proposal Would Result In OSP Rates Which Are Not Cost Based And Reasonable.

The CTA Rate Ceiling Proposal would establish a benchmark for OSP rates which has absolutely no relation to competitive pricing. Instead, the Rate Ceiling Proposal is structured so as to "ensure that all charges would be below those which prompted virtually all complaints [to the FCC] in the sample." See Rate Ceiling Proposal, at 7.^{2/}

There is undoubtedly a huge difference between competitive rates, and the level of excessive rates which triggers the filing of a consumer complaint with the FCC. In effect, the Rate Ceiling Proposal authorizes OSPs to charge an amount that is just below an amount excessive enough to trigger consumer outrage.

^{2/} The Rate Ceiling Proposal does not elaborate on the size of the sample, over what period of time the sample complaints were filed with the FCC, or whether the sample is statistically valid. In addition, the Proposal does not address whether the sample of complaints includes complaints that OSP charges were higher than the consumer's dominant carrier charges, or that the consumer was not aware that the call was being carried by an OSP.

The specific benchmark rates which are proposed may, in fact, be higher than the rates which many OSPs now charge and lead to rate increases.

Simply modifying the extremely excessive rates which cause consumers to take time to file complaints does nothing to eliminate the deception and misinformation which consumers may be given regarding actual rates. Based on both the level of proposed benchmark rates, as well as the failure to include competitive forces within these calculations, NAAG opposes these rates. It would be patently unfair to consumers to allow such excessive rates to take effect.

**C. If Adopted, The CTA Rate Ceiling Proposal
Would Allow OSPs To Exceed The Benchmark
Rates, Without Adequate Cost Justification.**

The Rate Ceiling Proposal would allow those OSPs which seek to exceed the presumptive rate ceiling to have "an expedited paper hearing to review the proffered cost justification" for their tariffs. Instead of requiring OSPs to justify their rates through traditional rate-making methodology, the rate ceiling proposal would allow such companies to provide costs according to only seven categories on a per minute basis, and "where appropriate, on an annualized basis." The FCC could then suspend

an OSP's tariffs for up to five months, during which time the OSP's cost filing could be reviewed.

If a substantial number of OSPs filed tariffs in excess of the proposed rate ceiling, the Commission's resources may be inadequate to thoroughly review the OSPs' cost justifications. Moreover, the Rate Ceiling Proposal makes no provision for the participation by any public parties, or for others to present any probative evidence rebutting cost justifications filed by OSPs.

The inevitable result would be that many OSP tariffs, already in excess of the proposed benchmark, could remain in effect after the five month tariff suspension expired, or after a limited review of the OSPs' cost justifications.

III. THE NAAG PROPOSAL PROVIDES NEEDED CONSUMER EDUCATION AND IS MORE LIKELY TO LEAD TO COMPETITIVE PRICING BENEFITS FOR CONSUMERS.

Unlike the Rate Ceiling Proposal which fails to provide additional information to consumers, the NAAG proposal would require additional disclosures to consumers by those OSPs whose rates, connection fees, and other charges deemed excessive. These disclosures are critical in order for consumers to make an informed choice when making a call from a payphone or aggregator phones. Unless consumers are aware: 1) that a call may not be

carried by their regular carrier; 2) that they may be charged more than their regular carrier would charge; and 3) how to contact their regular carrier, consumers will continue to be unfairly and unpleasantly surprised by OSP charges. If disclosures, such as those proposed by NAAG are required, consumers will have the ability to make informed decisions regarding the use of an OSP.

In addition, as a result of such disclosures, competition will force OSPs to charge reasonable rates. In effect, OSPs will have to compete for business, as opposed to capturing business based on consumers' lack of information. In the long run, true competition, as opposed to CTA's Rate Ceiling Proposal, will drive OSP prices to their reasonable level.

IV. CONCLUSION

The thrust of CTA's Rate Ceiling Proposal allows OSPs to charge rates which are not competitively based. Instead, CTA proposes a rate ceiling level just below the level which triggers consumer outrage. Although this Rate Ceiling Proposal may

eliminate some of the most excessive OSP rates, consumers are entitled to reasonable, competitively-driven prices.

Dated this 10th day of April, 1995.

RESPECTFULLY SUBMITTED,

National Association of Attorneys General
Telecommunications Subcommittee of the
Consumer Protection Committee

/s/ JAMES E. DOYLE

James E. Doyle
Attorney General
State of Wisconsin
Chairperson

/s/ ERNEST D. PREATE, JR.

Ernest D. Preate, Jr.
Attorney General
Commonwealth of Pennsylvania
Vice Chairperson



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